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11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA

13 PENNY DAVIDI BORSUK,

Individually and on Behalf of All Others

14 Similarly Situated,

15 Plaintiff,

16 v.

17 THE TRANSPORTATION CORRIDOR
AGENCIES, a government agency d/b/a
18 “The Toll Roads”;

19 FOOTHILL/EASTERN

20 TRANSPORTATION CORRIDOR
AGENCY, a government agency;

21 SAN JOAQUIN HILLS

22 TRANSPORTATION CORRIDOR
AGENCY, a government agency;

23 RHONDA REARDON, a natural person;

24 MICHAEL KRAMAN, a natural person;

CRAIG YOUNG, a natural person;

25 SCOTT SHOEFFEL, a natural person;

26 ROSS CHUN, a natural person;

27 [Caption continued on following page.]

Case No. 8:16-cv-00262 AG (JCGx)

CLASS ACTION

STIPULATION TO FILE A
CONSOLIDATED AMENDED
COMPLAINT AND FOR OTHER
RELIEF

Judge: Hon. Andrew J. Guilford

Mag. Judge: Hon. Jay C. Gandhi

Complaint Filed: Oct. 2, 2016

Removed: Feb. 16, 2016

DEMAND FOR JURY TRIAL

1 ORANGE COUNTY
2 TRANSPORTATION AUTHORITY, a
3 governmental agency;
4 DARRELL JOHNSON, a natural person;
5 3M COMPANY and BRIC TPS LLC;
6 and DOES 1-10, Inclusive,
7 Defendants.

8 EBRAHIM E. MAHDA, an Individual,
9 Plaintiff,
10 v.

11 TRANSPORTATION CORRIDOR
12 AGENCIES d/b/a THE TOLL ROADS
13 Defendant.

Case No. 8:16-cv-00940 AG (KESx)

Judge: Hon. Andrew J. Guilford
Mag. Judge: Hon. Karen E. Scott

Complaint Filed: May 23, 2016

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1 WHEREAS on October 2, 2015, Plaintiff Penny Davidi Borsuk filed a
 2 complaint in the Orange County Superior Court, which was removed to this
 3 Court on February 16, 2016 and subsequently amended, and the first amended
 4 complaint named as Defendants The Transportation Corridor Agencies d/b/a The
 5 Toll Roads, Foothill/Eastern Transportation Corridor Agency, San Joaquin Hills
 6 Transportation Corridor Agency, Rhonda Reardon, Michael Kraman, Craig
 7 Young, Scott Shoefel, Ross Chun, Orange County Transportation Authority,
 8 Darrell Johnson, 3M Company, BRiC TPS LLC, and DOES 1-10 (the “*Borsuk*”
 9 action);

10 WHEREAS on May 23, 2016, Plaintiff Ebrahim E. Mahda filed a similar
 11 complaint against Defendant Transportation Corridor Agencies d/b/a The Toll
 12 Roads in this Court (the “*Mahda*” action);

13 WHEREAS on May 26, 2016, Plaintiffs Todd Quarles and Todd Carpenter
 14 filed a similar complaint against Defendants San Joaquin Hills Transportation
 15 Corridor Agency, Foothill/Eastern Transportation Corridor Agency, 3M
 16 Company, BRiC-TPS LLC, Ross Chun, Craig Young, Inge G. Thulin, William
 17 P. Duffy, and DOES 1-50 in this Court (the “*Quarles*” action);

18 WHEREAS Plaintiffs are referred to collectively as “Plaintiffs,”
 19 Defendants Foothill/Eastern Transportation Corridor Agency, San Joaquin Hills
 20 Transportation Corridor Agency, Rhonda Reardon, Michael Kraman, Craig
 21 Young, Scott Shoefel, and Ross Chun are referred to collectively as “TCA,”
 22 Defendants Orange County Transportation Authority and Darrell Johnson are
 23 referred to collectively as “OCTA,” Defendants 3M Company, BRiC-TPS LLC,
 24 Inge G. Thulin, and William F. Duffy are referred to collectively as “3M/BRiC,”
 25 Defendant Transportation Corridor Agencies d/b/a The Toll Roads is referred to
 26 as “Transportation Corridor Agencies,” and TCA, OCTA, 3M/BRiC, and
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1 Transportation Corridor Agencies are referred to collectively as “All
2 Defendants”;

3 WHEREAS 3M/BRiC have not been served with any of the complaints to
4 date and are not parties to this stipulation;

5 WHEREAS on June 10, 2016, Plaintiffs Mahda, Quarles, and Carpenter
6 along with the Foothill/Eastern Transportation Corridor Agency and San Joaquin
7 Hills Transportation Corridor Agency stipulated in the *Mahda* action to dismiss
8 the *Quarles* action and amend the *Mahda* complaint to include Quarles and
9 Carpenter as named plaintiffs and add the claims from the *Quarles* action to the
10 *Mahda* complaint within 30 days (on or before July 10, 2016) (the
11 “*Mahda/Quarles* stipulation”);

12 WHEREAS the Transportation Corridor Agencies was not a party to the
13 *Mahda/Quarles* stipulation because the Foothill/Eastern Transportation Corridor
14 Agency and San Joaquin Hills Transportation Corridor Agency contend that the
15 Transportation Corridor Agencies is not a separate legal entity subject to suit, but
16 instead a common means of referring to the Foothill/Eastern Transportation
17 Corridor Agency and San Joaquin Hills Transportation Corridor Agency;

18 WHEREAS on June 13, 2016, TCA filed a motion to dismiss the first
19 amended complaint in the *Borsuk* action;

20 WHEREAS on June 14, 2016, this Court entered an order in the *Mahda*
21 action granting the *Mahda/Quarles* stipulation and ordered the Parties to file the
22 amended complaint on or before July 13, 2016;

23 WHEREAS on June 17, 2016, OCTA filed a motion to dismiss the first
24 amended complaint in the *Borsuk* action;

25 WHEREAS the *Quarles* action was dismissed pursuant to the
26 *Mahda/Quarles* stipulation;

1 WHEREAS on July 1, 2016, Plaintiffs filed a joint *ex parte* motion
 2 requesting (i) that the *Mahda/Quarles* and *Borsuk* actions be consolidated for all
 3 purposes, (ii) leave to file a consolidated complaint, and (iii) leave to amend the
 4 complaint to add David Coulter as a named plaintiff;

5 WHEREAS on July 8, 2016, this Court granted in part and denied in part
 6 the *ex parte* motion, ordering, among other things, that the matters be
 7 consolidated for pre-trial purposes only, and granting Plaintiffs until July 18,
 8 2016 to file a motion for leave to file a consolidated and/or amended complaint;

9 WHEREAS Plaintiffs have met and conferred with TCA and OCTA about
 10 filing a consolidated amended complaint without further motion practice and to
 11 consolidate the matters for all purposes; and

12 WHEREAS the Parties have reached agreement on such amendment, the
 13 addition of David Coulter as a named plaintiff, and agree to consolidate the
 14 matters for all purposes, subject to the limitations below, including, but not
 15 limited to, TCA and OCTA reserving all arguments and defenses, and without
 16 waiver of any argument or defense with respect to any of the original, amended
 17 or consolidated complaints.

18 NOW THEREFORE, IT IS HEREBY STIPULATED:

19 In order to best secure a just, speedy, and efficient resolution of the two
 20 actions pursuant to Federal Rules of Civil Procedure 1 and 42:

21 1. Plaintiffs will file a consolidated amended complaint within two
 22 weeks of the entry of this Order or by July 31, 2016, whichever is sooner, which
 23 may add David Coulter as a named plaintiff. Individual defendants shall be
 24 named in their professional capacities, not personally named in the consolidated
 25 complaint absent specific factual allegations regarding the specific wrongful
 26 act(s) or omission(s) alleged to give rise to personal liability against such
 27 individual defendant. Defendants agree to tolling of the statute of limitations for
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1 claims which may be brought against any individual defendant should facts arise
 2 during the course of this litigation warranting amendment of the pleadings.

3 2. To allow plaintiffs to file the consolidated amended complaint by
 4 the July 31, 2016, deadline above, OCTA agrees that the 45 day time limit for
 5 OCTA to act on the Government Claim filed or any amended claim to be filed by
 6 David Coulter and the Government Claim to be filed by Daniel Golka shall be
 7 waived, allowing Coulter to be added to the consolidated amended complaint
 8 without waiting for OCTA to act on the claim. OCTA reserves any and all
 9 defenses regarding the timeliness and/or sufficiency of the claim as it relates to
 10 the allegations of the consolidated amended complaint.

11 3. To allow Plaintiffs to file the consolidated amended complaint by
 12 the July 31, 2016, deadline above, the TCA agrees that the notice required by
 13 California Government Code §910 will be denied by operation of law within 5
 14 days (not 45 days) of service of such notice for David Coulter and one additional
 15 individual as yet to be named for purposes of California Government Code
 16 §911.6. The TCA reserves any and all defenses regarding the timeliness and/or
 17 sufficiency of any California Government Code notice filed by Plaintiffs, Coulter
 18 or the additional individual yet to be identified.

19 4. The TCA and OCTA shall have 30 days from the service of the
 20 consolidated amended complaint to file a responsive pleading.

21 5. Borsuk voluntarily dismisses the OCTA and Darrell Johnson from
 22 this lawsuit.

23 6. The following two related putative class actions currently pending
 24 before this Court are **CONSOLIDATED** for all purposes (the “*Consolidated*
 25 *Action*”):

(1) *Penny Davidi Borsuk et al. v. The Transportation Corridor Agencies et al.*, No. 8:16-cv-00262 AG (JCGx) (removed on February 16, 2016); and

(2) *Ebrahim E. Mahda et al. v. The Transportation Corridor Agencies et. al*, No. 8:16-cv-00940 AG (JCGx) (filed May 23, 2016).

7. The *Consolidated Action* shall be captioned *In Re Toll Roads Litigation*, Case No. 8:16-cv-00262-AG (JCGx), bearing the lowest case number of the two actions: No. 8:16-cv-00262 AG (JCGx).

8. The pending two (2) motions to dismiss (Dkt. Nos. 38 and 41 in the now *Consolidated Action*) relating to the currently operative complaint in the *Consolidated Action*, respectively scheduled to be heard on September 18, 2016, are hereby withdrawn, and the related hearing dates are vacated.

9. All Defendants retain all arguments and defenses that could have been asserted with respect to any of the original, amended or consolidated complaints.

10. Plaintiffs in the *Consolidated Action* shall propound all discovery jointly, and shall be limited to a total of 75 interrogatories, unless leave is granted by the Court for additional interrogatories based upon a showing of good cause.

11. Any other actions asserting claims that are the same as the claims at issue in the *Consolidated Action* that are subsequently filed in or transferred to this District pursuant to the Court's Local Rules and General Orders shall be consolidated with the *Consolidated Action* for all purposes, unless the Court determines that consolidation is not appropriate or would result in unreasonable delay or inefficiencies. *Cohen v. Foothill/Eastern Transportation Corridor*

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Agency *et al.*, SACV 15-01698 DDP (DFMx), which is currently pending before Judge Pregerson, is expressly excluded from this provision.

IT IS SO STIPULATED.

Respectfully submitted:

Dated: July 18, 2016

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Dated: July 18, 2016

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SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of the Electronic Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to defense counsel, and that I have obtained defense counsel's authorization to affix defense counsel's electronic signature to this document.

/s/Helen I. Zeldes
HELEN I. ZELDES

ZELDES HAEGGQUIST & ECK, LLP

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 18, 2016.

/s/Helen I. Zeldes

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